

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
MINUTES**

**July 12, 2010**

**APPROVED 8/2/10**

**1. OPENING OF THE MEETING**

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL:**

**PRESENT:** Eric Oakes  
Raymond Arroyo, Vice-Chairman  
William Martin, Chairman  
Robert Bicocchi  
Christopher Owens  
Guy Hartman  
Vernon McCoy (Alt #1)  
Matthew Ceplo (Alt. #2)

**ALSO PRESENT:** David Rutherford, Esq., Board Attorney  
Louis Raimondi, Brooker Engineering,  
Board Engineer  
Steve Lydon, Burgis Associates,  
Board Planner

**ABSENT:** Michael Bieri (excused absence)

**4. MINUTES** - The Minutes of 6/7/10 were approved as amended on motion made by Mr. Oakes, seconded by Mr. Bicocchi and carried on roll call vote.

**5. CORRESPONDENCE:**

(WWZB 7/12/10)

1. Memo dated 6/18/10 from Burgis Associates RE: Daniel Olivier;

2. Memoranda dated 6/23/20 & 7/1/10 from Burgis Associates RE: CVS;

3. Letter dated 6/17/10 from Brooker Engineering RE: Retro Fitness, 25 Sullivan Street;

4. Memo dated 6/21/20 from Burgis Associates RE: Retro Fitness;

5. Letter dated 6/25/20 from Brooker Engineering RE: CVS;

6. Memo dated 6/30/10 from Robert Hoffmann, Administrator RE: Revised 2010 Bidding Threshold Limits;

7. Letter dated 7/2/10 from L. Scott Berkoben RE: St. Mark AME Zion Church;

6. **VOUCHERS:** A motion to approve Vouchers totaling \$3,262.25 was made by Mr. Oakes, seconded by Mr. Arroyo, and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Pompilio's Pizza, Inc., 221-223 Westwood Ave. - Variance for Expansion** - (Steve Lydon recused; David Spatz appeared as Substitute Planner) - Board Attorney Rutherford read an overview of the Resolution of Approval into the record. There were no further questions, comments or discussions. A motion to approve the Resolution was made by Mr. Oakes and seconded by Mr. Arroyo. On roll call vote, Mr. Bicocchi, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, and Mr. Martin voted yes.

8. **PENDING NEW BUSINESS:** None

9. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS  
The Board Professionals were sworn in.

(WWZB 7/12/10)

**1. New St. Mark AME Zion Church, 100 Palisade Avenue - Minor site Plan application** - Adjourned to 8/2/10 at the request of applicant - Applicant needs survey and retained a surveyor, who was out of town.

**2. Keynton, 27 Hillside Avenue - Variance application** - Mr. Keynton appeared pro se without representation by Mr. Berkoben. Mr. Raimondi advised the architectural plans were received, prepared by Joyce Mfg. Company, signed by Kenneth J. Rowan, on 6/19/10, dated 9/23/08; revised to 6/16/10. A Survey made by Kurens Associates, dated 3/6/09, was also submitted. Mr. Keynton testified he was asking for the enclosed sunroom because his wife and son have allergies.

Mr. Lydon outlined the variance as being a side yard setback variance. There were no building or impervious coverage issues. The parking is satisfied. Mr. Keynton stated the room would not be heated. Questions by the Board were entertained.

It appeared there were no interested parties present. There no further questions, comments or discussions. A motion for approval was made by Mr. Harman and seconded by Mr. Bicocchi. On roll call vote, Mr. Bicocchi, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, Mr. McKoy, and Mr. Martin voted yes.

**3. Fahie, 60 Westwood Boulevard - Application for Certificate of Non-conforming Use** - Carried to 8/2/10 at the request of the applicant.

**4. Porqui Pas, 31 Westwood Avenue - Appeal/Variance Application** - Carried to 8/2/10 at the request of the applicant;

**5. Kim -663 Ackerman Avenue - Variance** - Donald Nemcik, Esq. represented the applicant. Vincent Benanti, applicant's Architect, and Ms. Kim, property owner, were sworn in. Mr. Nemcik questioned the applicant. Ms. Kim stated she resides at the premises, in the R1 zone. There was a one car garage, greatly in need in repair at the time of her purchase, she testified. It was not structurally sound and would have to be replaced. Finances were an issue, and every year it kept getting worse. Her concern was safety. She has neighbors with small children on either side of her house. Aesthetically, it is an eyesore. Ms. Kim made a decision to purchase a pre-fabricated

(WWZB 7/12/10)

garage, feeling it was a safe way, and had to hire an architect. When she found out she needed a variance, she did not continue the replacement of the garage. She would not rent out the garage or store any hazardous materials. The satellite television antenna was moved to the house. Mr. Nemcik had no further questions of the witness.

Questions by Board Members followed. Mr. Martin asked, and applicant responded she took down the garage without a demolition permit from the Building Dept. Mr. Benanti testified the garage needs to be moved to the East to be placed on the slab. The surveyor can only survey what is there, and that is why it says 4', but it has to be relocated 4' to the East. Mr. Martin commented, had a permit been applied for, this would not have happened.

Mr. Rutherford asked for the rear yard setback. Mr. Benanti responded 2'. The rear will remain the same. Mr. Rutherford noted it would be 5.67' on the side and 2' in the rear. Mr. Nemcik concurred. Mr. Nemcik also stated the neighbor would be replacing the fence with a new fence, aligned in a straight direction, 1' inside their own property. Mr. Martin inquired who took down the garage. Ms. Kim responded the workers of the person that made the garage took down the old garage and delivered the new one.

Mr. Nemcik stated his client appeared before the Municipal Court, paid the fine and made this application. Mr. Martin stated 2' is very close. Mr. Lydon noted if you move it an additional variance is created. Mr. Martin asked, and Mr. Benanti stated the exterior was to be sided with vinyl siding. They will take out a permit. The floor will support vehicle loads. Mr. Raimondi recommended a new survey be obtained with accurate calculations, certified by a land surveyor. Mr. Martin suggested it be 4' away in the rear. Mr. Owens asked, and Mr. Benanti stated it is in the same location as the old. It will not go over the foundation. Mr. Raimondi said the survey should be received prior to any action by the Board. Mr. Oakes what type of apron it would be, and Mr. Benanti stated built-up asphalt.

There were no questions from the public. The applicant was asked to consider moving the garage forward 2' to increase the rear yard setback. A new survey was required showing what the

(WWZB 7/12/10)

dimension will be between the front of the garage and the house and the distance from the wood deck to the rear property line, as Mr. Raimondi stated. The matter was carried to the 8/2/10 meeting.

The Board took a recess from 9:00 to 9:10 p.m.

**6. CVS, 289 Broadway - Application for Development (5/10/10 Special Meeting)** (Christopher Owens recused). Mr. Alampi stated that although moving the drive-up window and drive-through would require a great deal of work by the architect and engineer, they made the decision to revise their architectural and engineering plans. The architectural plan was revised to 6/16/10 and delivered to the Board. The engineering plan was revised on 6/23/10 and delivered as well. The engineer did an analysis as well. There were changes to the lighting. The drive-through was shifted further away from Broadway. They had no further testimony. Both witness were present and previously sworn. Reports were received from the Board Professionals.

Mr. Martin recalled from the last meeting that Mr. Rutherford was to provide a legal opinion of the facts and his conclusion surrounding the question of the qualification of Mr. Lydon to act as Board Planner, and any conflict of interest, as raised at the last meeting. Mr. Rutherford read his opinion. Mr. Lydon's employer rents space in a building from Mr. Meisel and is not an applicant. He is not a property owner within 200'. Based on his research and his understanding of the facts and the law, it was his legal opinion that there was no conflict, and that Mr. Lydon was eligible to act as Planner and advise the Board as such. Mr. Alampi concurred there was no conflict. A motion to accept Mr. Rutherford's opinion and to accept the eligibility of Mr. Lydon as Planner, and that there was no conflict of interest, was made by Mr. Bicocchi, seconded by Mr. Arroyo and carried unanimously on roll call vote.

The hearing continued. Robert Gehr, previously sworn, came forward and testified as to the changes to the drive-through and floor plan as shown. The mezzanine was slightly adjusted to increase the building's interior space by 2,054 sq. ft. The Floor Plans were marked A24, dated 6/16/10. Mr. Gehr also stated Sheet A4-1 was dated today, amended per Mr. Raimondi's comment letter dated 6/25/10 to reverse the notations Exit and Full Service located on the drive-thru canopy. Mr. Gehr stated

(WWZB 7/12/10)

the area square footage for the surface areas are in compliance with the town but according to CVS requirements. The difference is the walls are not taken into consideration. Mr. Arroyo inquired if there was a way to prevent the shopping carts from leaving the store. Mr. Gehr would come to a conclusion. Mr. Martin stated we need to have a definitive answer now. The carts need to be kept inside the store, and how is he going to do that, Mr. Martin inquired. Mr. Alampi advised they certainly will agree to restrict the carts to stay inside the store area and would accept that as a condition. The sizes of the carts are smaller and shoppers are not buying bulk. They also have poles that can be placed on the carts, and they will restrict them. Mr. Arroyo was satisfied with that response. Mr. Arroyo asked him to refresh the Board on certain items such as signage. Mr. Alampi advised they will represent a signage package which will be reduced in size and scale.

David Caruso, Project Engineer, continued under oath. He was asked to do an analysis of the drive-thru. His plan was revised and redated to 6/23/10, consisting of 19 pages. Not all 19 were revised. This was marked as A25. Mr. Caruso also developed a Stormwater Management report with minor adjustments, revised to June, 2010 and marked A26. This has been on file more than 10 days. He also incorporated a vehicle movement plan on VM1, marked A28, a mounted enlargement of the actual drive-through stacking, window configuration and showing distances from the curb to the last car entering the bypass lane. A27 was the colored rendering of the main Site Plan exhibit. Keeping in line with the drive-thru being moved 8' they moved the overhang, provided a curb delineator as a separator, provided a tree well, and they also added paver striping, signage, and a stop sign. As for the footprint of the building or parking spaces, only minor changes were made to the stormwater management system due to a drainage inlet added. A28 was again mounted and referenced, entitled View of Vehicle Drive-thru Stacking. The only change was the stop bar pavement striping, which was a specific comment of Mr. Raimondi. This was also shown on C3. Mr. Gehr explained the width of the drive-thru lane and bypass aisle, which he believed to be adequate and does not change from the widths previously shown. There were no further changes to the plans. Mr. Alampi had nothing further.

Mr. Raimondi asked Mr. Caruso to explain the signage. Mr. Caruso stated there will be a sign directing drive-thru to the

(WWZB 7/12/10)

left; by-pass to the right. Basically it is directional signage. Mr. Raimondi questioned the witness, and drainage details would be added. As for grading, he also recommended the HDPE storm drain be located along the northerly side of the entrance bypass lane in order to keep groundwater away from the building. Also, Mr. Arroyo inquired, and the handrail will be removed from the plans. Mr. Caruso was then asked by Mr. McKoy for the measurement from the face of the building to the street curb, the figure is approx 12-13'. They are giving about a 10' walkway, which equates to a 6' walkable space. Mr. Martin asked if there were any snow removal issues with the curb delineators, and Mr. Caruso said they will be given a copy of the plan, and he felt it was important to have these separators. The stop bar was to ensure the vehicles remain in their paths. There will also be "do not enter" signs. The Board requested a mirror at the bend in the bypass land. Mr. Raimondi agreed. There were no further questions of Mr. Caruso.

Mr. Gehr, displayed A29 and told the Board how he achieved the design criteria, per pages 24-30 of the Master Plan for the downtown area. The corner entrance had canopies and they managed to achieve part of the design guidelines in every section. Mr. Arroyo brought forth the requirement that 50% of the window glass of the public right of way needs to be translucent, and noted the poster board, with only 17% translucent. This was not entirely in line with that; however, Mr. Gehr pointed out the views provided and they tried to balance this as much as possible with display windows, open glass, but it is a guideline and they are trying to work with the Board to achieve hopefully a compromise. Mr. Ceplo asked if there would be a security problem. Mr. Gehr said as the architect, he could not answer. Mr. Martin noted the door is full glass, so you can still see through it. We do not have that solid door facing Broadway, which was not particularly pleasing to look at. Mr. Oakes suggested dropping the back of the shelving unit down about 3' in the center windows to provide more open views, since they do not need to be 7'. Mr. Alampi advised they would agree to it. He understands what the Board wants. There were no further questions.

Mr. Martin stated the witnesses were concluded, and they heard from the public. Mr. Rutherford advised the closing comments should then be heard. Mr. Alampi gave an overview and his closing summary. The went from a two-lane drive-thru with a

(WWZB 7/12/10)

one-lane drive-thru and a bypass lane. The public is very much familiar with this site as the Seville Diner. The ingress and egress became a challenge, but they saw the wisdom of the Board. In no small measure, this drive-thru has become a one-lane, ingress only, with a position of the window to ensure the public that at least three vehicles could line up and the public's interest is served by the Board's ability to control this drive-thru use, and they are providing a needed service for the pharmaceuticals for the elderly and sick. It is a family value opportunity, and this constitutes a special reason that the variance is warranted. He brought a series of recent cases that society's views and needs are changing. There is a body of law that say that a drive-thru is really an accessory of a main use and is almost a principal use. The Board will look at the application on its merits, stating is this needed and asking did we do our job and did the applicant do its job, coming in openly and seeing how it could improve the plan. The parking was adequately designed, they pulled the building up, upgraded the building, enriched in its fabric, material and design with peaked and gabled roofs. They realize they are at the Gateway of the Pascack Valley, and they want the town to be proud of this building, its appearance and safety features. They view all the people of Westwood as their customers, and they are free to use the parking lot. He feels the Board should view this as positive and look upon this favorably for approval.

Mr. Rutherford explained the issues at hand in the form of instruction. The first variance is under section D1, because drive-through facilities are not permitted in the zone. The other D variance is D6 for height. Bulk variances are also needed, which can be granted under subsection C1 or C2, flexible C. So, Mr. Rutherford, reviewed, the Board is dealing with variances under two sections. The use, D variance, requires five (5) affirmative votes and enhanced burden of proofs, giving details. The Board should apply these principals in deciding the drive-thru facilities. Mr. Rutherford reviewed the variances and the proof requirement for each. Mr. Lydon commented. Mr. Alampi made a clarification concerning the canopy area.

The Board proceeded with commentary from Board Members. Mr. Oakes complimented the applicant for its egress and recognized the Board's concern about the traffic issues. It constitutes a better circulation pattern, with extra security on the bypass. They actually worked with the Board. The drive-thru is also



(WWZB 7/12/10)

tucked behind the building, unseen from the front. Mr. Bicocchi gave positive comments about the drive-thru and signage. Mr. Hartman commented having the drive-thru would be a benefit and is clearly articulated. Mr. Martin asked how the benefit relates to the zoning ordinance. Mr. Hartman stated he felt it was beneficial especially with the aging population. A lengthy commentary was given by Mr. Arroyo about the action of the Council regarding drive-throughs two years ago, followed by discussion. Mr. Arroyo felt it was a leap of faith, and this site was not particularly suited.

Mr. Martin commented he felt the site was suited and a pharmacy is a permitted use. Elderly people, ill people and mothers with children would be benefited by this. There are benefits to a single lane drive-thru for a pharmacy. It is not like a bank or fast food restaurant. It will be used in a very minimal way. Mr. Arroyo continued. Mr. Owens commented the visits here are supposed to be shorter than for a bank, since there are two visits—one for drop off and one for pick up. Mr. Bicocchi commented the 45% increase in traffic is due to the diminished usage of the Seville Diner from two years ago. Mr. Martin commented if the site was empty, it would be measured from "0" intensity. Mr. Martin commented this is a different kind of drive-thru. Mr. Arroyo felt the benefit was small, and we need the setback on Jefferson Avenue. Mr. Martin called for any other discussions. Mr. Oakes commented bringing the building up closer to the sidewalk will put it in a position that is more consistent with the other buildings on Jefferson Avenue. Mr. Arroyo felt there was loss of green space on Jefferson. This building is unsuccessful and needs the setback. Mr. Hartman noted there will be loss of green space. Mr. Oakes said they perhaps they could pull it back 1'. Mr. Arroyo said they could still have this building without a drive-thru. It was 11:40 pm, and with no further comments by Board Members, Chairman Martin asked for a motion.

Mr. Bicocchi stated a few things were wrong and a few things were right. The Board has spent many hours hearing the application and has done its due diligence. Mr. Martin has provided good leadership. Based on all of these reasons and how he feels about the application, he makes a motion to approve, based on the fact that the application shows merit for the community. The motion was seconded by Mr. Oakes. Conditions were set forth by Mr. Rutherford, i.e., Developers Agreement,

(WWZB 7/12/10)

obtaining any and all other required approvals; no signage granted, compliance with all laws of the Borough, etc.; easement required for the walkway with adjoining property owner if Parking Authority wishes. Shopping carts are to remain in the store. Applicant would reduce the height of the shelving for the center windows. Mr. Martin stated the brick must be real brick. Mr. Arroyo said the parking shared with the general public should be a condition. A safety mirror is to be installed. Mr. Martin commented he felt it was the intent of the applicant. Mr. Rutherford advised any apparent conditions can be conferred upon by the parties. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Hartman, Mr. Oakes, Mr. McKoy, Mr. Ceplo, and Mr. Martin voted yes. Mr. Arroyo voted no.

**7. Retro Fitness, 25 Sullivan Street** - Carried to 8/2/10 at the request of the applicant; Applicant should grant an extension of time - Mr. Rutherford to contact applicant's attorney regarding same.

**8. Olivier - 174 Third Avenue - Variance** - Carried to 8/2/10 at the request of the applicant;

**10. DISCUSSION:** None

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 11:47 p.m.

**Respectfully submitted,**

---

**MARY R. VERDUCCI, Paralegal**  
**Zoning Board Secretary**